IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.1068 OF 2002
IN
SUMMARY SUIT NO.2051 OF 2002

Shri Jayesh Shah ...Plaintiff.

Vs

M/s. Kevin Exports
Pvt. Ltd. & Ors. ...Defendants.

Mr. J.A. Udaipuri i/b R.S. Mishra for the Plaintiff.

Mr. J. Tur i/b M/s O.P. Soni & Co. for the defendants.

CORAM: V.M. KANADE, J.

DATE : 24th August, 2004.

P.C.

1. Plaintiff is carrying on business as sole proprietor and a dealer in transferable Quota Certificates which are issued by the Apparel Export Promotion Council. Defendants are a Private Limited Company and are registered member exporters of the Apparel Export Promotion Council.

2. Plaintiff's case is that during the course of business, representatives of the defendants approached the plaintiff and negotiated for the procurement and purchase of Quota Certificates or Transfer Entitlement Certificates. Plaintiff's case is that the defendants confirmed the guarantee and undertook to make payment

to the plaintiff for the quota purchases for and on behalf of both the defendants. The case of the plaintiff is that the defendants failed to pay the plaintiff's commission. Plaintiff has relied upon the various copies of the declaration of the transferee in respect of various transactions. Plaintiff has also annexed debit notes which were forwarded by him, towards various transactions. Plaintiff has relied upon various transactions in paras 5, 6 and 7. Plaintiff has also relied on correspondence between the parties. On the basis of these documents, Plaintiff is seeking to recover an amount of Rs 2,69,626,76/- along with interest.

3. Defendants have filed their affidavit-in-reply in which it is stated that the Summary Suit under the provisions of Order XXXVII Rule 2 is not maintainable. The defence of the defendants is that the defendants have no dealing with the plaintiff and the defendants had purchased the entire quota directly from the exporters and, therefore, there was no question of any dealing with any middleman. Defendants have further stated that the Apparel Export Promotion Council forbids third party transaction and, therefore, the question of agreeing with the plaintiff for third party transaction does not arise. That, the debit

notes which have been referred to in the plaint have been issued by the exporters and not by the plaintiffs.

4. From the perusal of the plaint and the affidavit in reply, it can be seen that the suit which is filed by the plaintiff is neither based on any written contract nor it is based on any Bill of Exchange or a Promissory Note. Further, the liability has not been acknowledged by the defendants. The demand also is not for any liquidated sum of money. None of the documents annexed to the plaint indicates that the amount claimed by the plaintiff is due and payable by the defendants. In my view, therefore, the defendants have raised a triable issue and are, therefore, entitled for unconditional leave to defend the suit.

Written Statement to be filed within 8 weeks.

5. Summons for Judgement is disposed of in the above terms.

V.M. KANADE, J.